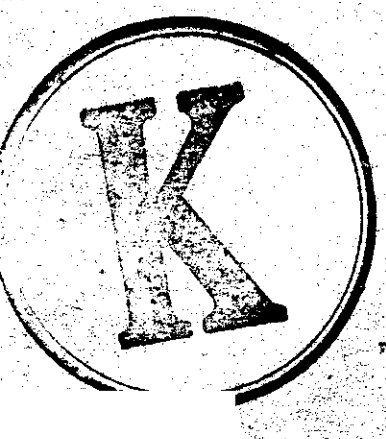

1949. **File No.** O. Molasses/49

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Bombay Molasses Act 1947

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O. Molasses/49

File No.

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C O N T E N T S.

Legal Department File No. C.Molasses/49.

Sr. No.	R.I. / C. No.	Subject	Pages.
1)	7296 30-6-49	Bombay Molasses Act 1947. Section 20 (e) - Rule 3 (1) whether the Company is required to take a licence in form M -I when it produces and uses the molasses.	1 -3
2)	9171 13-8-49	Section 21 -- Whether the Company is entitled to compensation on account of loss sufferred by the ultra vires act of the Commr. of excise.	5 - 9

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Office of the R.L.A.

Question whether the Company is required to take a licence in Form M-I when it produces and uses the molasses- Bombay Molasses Act, 1947. Section 20(e) - Rule 3(1).

The question raised for the consideration of the Remembrancer of Legal Affairs is whether it is obligatory on the part of Messrs. Walchandnagar Industries Ltd. to obtain under the Bombay Molasses Act, 1947 and the Rules made thereunder, a licence in Form M-I for possession and sale of molasses when the Company does not sell or intend to sell any molasses but uses molasses to produce as a by-product in the process of manufacture of sugar or gur from sugarcane in their sugar factory for distillation of spirit, and is prepared to take out a licence in form M-II for possession and use of molasses.

Under section 8 of the Bombay Molasses Act, 1947, no person shall sell or have in his possession any quantity of molasses save under a licence. Under Rule 3(1) of the Bombay Molasses Rules 1947, no licence for the sale or possession of molasses shall be granted unless such licence is required in respect of matters specified in clauses (i) and (ii). Sub-rule (2) states that a licence for the possession of molasses may also be granted if the molasses is to be used for bona fide domestic or industrial purposes. Form M-I of the licence prescribe by Government Resolution, Revenue Department No. 9352/33, dated the 23rd February 1948, is in respect of the possession and sale of molasses while the licence in form M-II is in respect of the possession and use of molasses. Apparently, therefore, Messrs. Walchandnagar Industries, Ltd., can be required to take a licence in form M-II when the Company proposes to use molasses for

industrial purposes and not for sale. The Commissioner of Excise in his endorsement, at page 43 observes: "The Company's contention is that where the molasses is used for its own use such as distillation of spirit, manurial or agricultural purposes a licence in form M.II is not required and that a licence in form M.II is adequate. This contention is one-sided and shows that the Company wants to evade obtaining the licence in Form M.I ~~on the~~ on the pretext that it could ~~make~~ use of its own produce under cover of the licence in form M.II - possession of molasses for use; but the fact that it uses its own ~~produce under cover of the licence in form M.XX M.II - possession of molasses for use; but the fact that it uses its own~~ molasses does not exempt the Company from obtaining the licence in form M.I. Had the Company not produced molasses as a by-product in the process of manufacture of sugar or gur, it would have obtained its requirements for the purposes of distillation of spirit from a producer holding the licence in form M.I. The Coy. is not entitled to make use of its own production unless it obtains a licence in form M.I."

This opinion of the Commissioner of excise, it appears, is based on Government Order, Revenue Department, No. 9323/33, dated the 23rd February 1948, which is issued under clause (e) of section 20 of the Bombay Molasses Act, 1947, directing that licences for sale of molasses shall be granted only to persons who are producers of molasses as a by-product in the process of manufacture of sugar or gur from sugar cane in a sugar or gur factory. It is true that this order of Government indirectly prohibits users of molasses from purchasing molasses from persons other than producers. But it would not be correct to say that, because Messrs. Walchandnagar Industires , Ltd., could not have purchased molasses from persons other than producers thereof, they would also require a licence in form M.I; for, the Bombay Molasses Act does not require a licence for producing molasses nor does the user of molasses by Messrs. Walchandnagar Industries, Ltd. involve

any sale to themselves as use of their own main molasses would not be a sale. The view taken by the Commissioner of Excise is not correct and the Company cannot be compelled to take a licence in form M.I.

Sd/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7256 , dated the 30th June 1949.

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Office of the R.L.A.

Question whether ultra vires act of the Commissioner of Excise is protected by Section 21 of Bombay Molasses Act, 1947.

The Commissioner of Excise takes the view that the claims of Messrs. Walchand Industries Limited for compensation for loss of molasses on account of his order dated the 13th May 1948 (which was ultra vires) deserves no consideration as the appeal is time barred under section 18 of the Bombay Molasses Act, 1947. The Revenue Department considers that this is not correct as the action taken by the Commissioner in compelling the firm to obtain a licence in form M.I. was ultra vires and although the appeal is time barred the Commissioner's orders being irregular the firm would be entitled to the loss suffered by it. The R.L.A. is requested to advise whether the view taken by the Revenue Department is correct.

2. It is true that the order of the Commissioner of Excise requiring the company to take a licence in form M.I. was not in conformity with the provision of the Bombay Molasses Act, 1947, and the rules made thereunder and as such ultra vires; there can be no appeal under section 18 against such ultra vires order. However, the question for consideration is whether a suit can lie against the Government or the Commissioner of Excise for damages suffered by the Company as a result of the order of the Commissioner of Excise insisting on the company to take a licence in form M.I.

3. Section 21 of the Bombay Molasses Act provides that no suit shall lie against the Crown or any officer in respect of anything done or alleged to have been done in pur-

in pursuance of this act within the meaning of section 21 and whether limitation prescribed by that section would apply to a suit in respect of such ultra vires act. In Second Appeal No. 820 of 1944 (province of Bombay Vs. Ahmedabad Borough Municipality) it was held by Weston and Chainani JJ. that the limitation prescribed by section 206 of the Municipal Boroughs Act would not apply to a suit of the nature such as the one where the order passed was ultra vires. That apart, under the general law it appears that the Commissioner of Excise would not be liable to the company for damages. In spooner Vs. Juddow (1950, Moo.I.A. 353 at page 379), Lord Campbell said-

"there can be no rule more firmly established, than that if parties bona fide and not absurdly believe that they are acting in pursuance of Statues, and according to law, they are entitled to the special protection which the legislature intended for them, although they have done an illegal act."

These observations were quoted with approval by Batchelor J. in Dhondu Dagdu Pati Vs. the Secretary of State for India, 37 Bom. 101, at page 106 with following additional observations.

"In strictness, anything not authorised by a Statute cannot be said to be in pursuance of it, while it is authorized by the Statute clearly it would need no other protection. But if effect were given to such a construction it would altogether do away with the protection intended to be given; accordingly the general principle is that if any public or private body charged with the execution of a Statute honestly intends to put the law in motion and really and not unreasonably believes in the existence of facts, which, if existent, would justify his acting and acts accordingly, his conduct will be in ursuance of the Statute and will be protected."

4. It would therefore be possible for the Commissioner of Excise to plead that he passed the order honestly believing that it was necessary for the company to take a licence in form M.I., and claim protection. Government also would not be liable to pay any damages to the Company for Government would not be responsible for any tort committed by a public servant. It would therefore follow that, even assuming that the plea of limitation under section 21 of the Bombay Molasses Act would not be available in the present case, still it would be possible to defend any action by the company for damages, either against the Government or the Commissioner of Excise.

Sd/- (P.M.I).

Nememorancer of Legal Affairs.

U.R. to R.D., No. 9171 , dated the 13th August, 1949.

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